

Kansas Department of Health and Environment
Bureau of Waste Management Policy 09-01

related to

**Limit on Term of Variances
Incorporated in Municipal Solid Waste Permits**

effective January 5, 2009

revised June 18, 2009

Purpose

The purpose of this policy is to explain how a 12-year limit on variances to the liquids restriction, run-on control system, and final cover design at municipal solid waste landfills (MSWLFs) will be implemented, and to clarify the implications of the 12-year limit.

Background

In order to maintain Federal authorization for administering the solid waste program in Kansas, the Kansas Department of Health and Environment (KDHE) must ensure that state laws, regulations, and policies are in place that are at least as stringent as the Federal solid waste laws and regulations.

On March 22, 2004 EPA promulgated the Research, Development, and Demonstration Permits (RD&D) rule for municipal solid waste landfills. Under this rule KDHE has the authority to issue MSWLF permits in which the restriction on liquid waste, the run-on control system, and/or the final cover design differ from the regulatory criteria, provided certain other requirements are met. One of the requirements is that each landfill that has been granted such a variance must submit data annually that evaluate the success of the alternative operations and/or design.

40 CFR 258.4(e)(1) requires that the term of any RD&D permit must be no more than 12 years. The preamble to the RD&D rule states that EPA will consider making regulatory changes to allow alternative practices to continue for longer than 12 years. These changes might provide an exemption to a specific facility, or might apply to the MSWLF universe as a whole.

KDHE has issued permits to MSWLFs that include variances to the solid waste regulations under the authority of K.A.R. 28-29-2. This regulation requires reevaluation of the variance every two years, but does not put a limit on the total length of the variance. Therefore, the Kansas solid waste regulations are less stringent than the Federal RD&D rule with respect to the allowable period of variance.

Action

When issuing permits, including permit modifications, that include any variance that is less stringent than federal regulations concerning liquids restriction, run-on systems, or design of the final cover, KDHE will limit the total length of the variance to 12 years. This limit will be included as one of the special conditions of the permit, and the permittee will acknowledge the special condition by signing the permit certification page. The 12-year period will be calculated from the issue date of the permit or permit modification which contains the variance.

Implications

KDHE will not allow any continuation of the variance after the 12-year period passes unless EPA modifies the RD&D rule to eliminate this restriction. This would mean that previously approved design or operations plans would need to cease at the end of 12 years, but permanently constructed systems would not need to be eliminated and replaced. More specifically, a facility could not construct an alternative final cover after the 12-year period, but would need to re-design the cover to meet the standard final cover requirements set forth in K.A.R. 28-29-121. Alternative operations related to liquids additions and run-on controls would need to cease at the end of 12 years and the facility would need to modify its operations plan to comply with the applicable requirements set forth in K.A. R. 28-29-108(j) and (k). The required changes to the design and operating plans to address the conversion from the approved variance(s) to standard requirements should be submitted to KDHE at least 12 months before the end of the 12-year variance period. Alternative final covers constructed before the end of the 12-year period may be left in place as long as monitoring data indicates adequate performance.

If the facility wants the variance to extend beyond the 12-year limit, the facility should seek a site-specific or general rulemaking from EPA that would allow continuation of the practice or design. The EPA evaluation and rulemaking process could take several years, so the request should be made well ahead of the end of the 12-year period.

This policy shall remain in effect until it is revoked or is rendered obsolete by the amendment of Federal or State regulations.



William L. Bider
Director, Bureau of Waste Management

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